

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

JUN 21 2013

Clerk, U.S. District Court
District Of Montana
Missoula

PETER WILLIAM HARPER,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

CV 12-106-H-DLC-RKS

ORDER

United States Magistrate Judge Keith Strong entered Findings and Recommendation on May 20, 2013, and recommended that the Petition (doc. 1) be dismissed for lack of jurisdiction. Petitioner did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Petitioner Harper filed this action seeking a writ of habeas corpus under 28

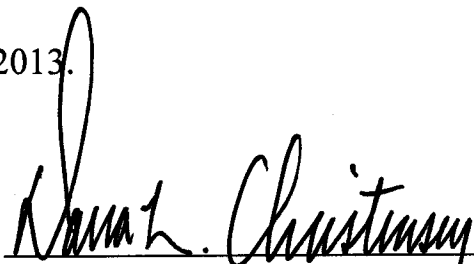
U.S.C. § 2254. He challenges his conviction for resisting arrest. Judge Strong concluded that because federal habeas jurisdiction does not lie against the conviction for resisting arrest, this action should be dismissed. After a review of Judge Strong's Findings and Recommendation, I find no clear error. Accordingly,

IT IS ORDERED that Judge Strong's Findings and Recommendation (doc. 4) are adopted in full. The Petition (doc. 1) is DISMISSED for lack of jurisdiction.

The Clerk of Court is direct to enter, by separate document, a judgment of dismissal.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 21st day of June 2013.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", is written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court